OLD ART VI — SEC 5
1965 NEW ART X — SEC 5

INLAND STEEL COMPANY)
and)
UNITED STEELWORKERS OF AMERICA)
Local Union 1010

Grievance No. 7-F-35
Docket No. IH-343-334-6/16/58
Arbitration No. 333

Opinion and Award

Appearances:

For the Company:

L. E. Davidson, Assistant Superintendent, Labor Relations
W. A. Dillon, Assistant Superintendent, Labor Relations
M. S. Riffle, Divisional Supervisor, Labor Relations
E. J. Cooney, Assistant Superintendent, Plant #2 Mills

For the Union:

Cecil Clifton, International Representative
Fred Gardner, Chairman, Grievance Committee
Joseph Wolanin, Secretary, Grievance Committee
C. Szynanski, Grievance Committeeman

Twenty-three employees on the 8-4 turn in the No. 2 Blooming Mill Department claim four hours of "reporting pay" for March 21, 1958. A violation is claimed of Article VI, Section 5 of the Agreement which reads as follows:

> "Section 5. Whenever an employee has been scheduled or notified to report for work and upon his arrival at the plant finds no work available in the occupation for which he was scheduled or notified to report, unless the Company has notified him at the place he has designated for that purpose not less than two (2) hours before his scheduled starting time, he shall be paid for four (4) hours at his pay period average straight-time earnings rate on the occupation for which he was scheduled or notified to report. If he is offered other work for which he is physically fit, for four (4) hours or more with earnings for the same effort at least equal to his pay period average straight time earnings on the occupation for which he was scheduled or notified to report and he refuses such work, he shall not be eligible to receive the four (4) hours' reporting pay above provided for.
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> "It shall be the duty of the employee to keep the Company advised of a reliable means of prompt communication with him.
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> "The purpose of this Section is to compensate employees for faulty scheduling and it shall not apply if the failure to supply work to an employee is due to the employee, or to a strike, stoppage of work in connection with a labor

> dispute, power or equipment failure, acts of God or other interferences with Company operations beyond the control of the Company."

At 11:20 p.m. on March 20, 1958 the 90-ton armature of the Roll Train Motor in the Mill burned out. This 7,000 horsepower motor drives the rolls in the Blooming Mill and its breakdown led to the cessation of work on the Mill and its auxiliary units.

Although efforts were promptly made to ascertain the trouble and commence repairs, it was some time before a satisfactory evaluation could be made and before it was decided that the armature could not be repaired at the site but that the installation of a new one was necessary. Initially, it was estimated that about 12 hours would be required before operations could be resumed. Questioning at the hearing was not too successful in determining precisely the hour when this 12 hour estimate was made; but it would seem that it occurred shortly after the 11:20 p.m. breakdown. Thus, it was not expected, at midnight, that the Mill would be ready much before noon the next day, in which case the employees on the 8-4 turn would be required to wait four hours (if other work were not available) until they could perform the work for which they were scheduled on March 21. Nonetheless, according to the Company version of events, as stated in the first and third step answers and at the hearing, it was

> "decided to permit the crew scheduled for 8-4 on March 21 to work in order to start the mill when the repairs were completed." /First step answer/

Accordingly, no steps were taken, as is customary, to notify the employees not to report. Presumably, the Company was prepared, at the time it made its 12 hour repair decision to compensate the employees for such amounts as they might be entitled to under the provisions of the Agreement, even if they did not perform the work for which they were to report until about noon on March 21.

According to Company testimony it took approximately four or five hours after the 11:20 p.m. breakdown to remove the shield of the armature and to determine definitely what needed to be done. 1/ The record is not entirely clear why this point was made, but it would appear that after the shield had been removed sometime between 3:20 a.m. and 4:20 a.m. the Company

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1/ The Union representative who claimed that, as an employee in other steel mills he had participated in this operation on similar equipment, refused to accept the four or five hour period of time as reasonable, asserting that the task could not consume in excess of three hours. The question, however, is not how many hours the task should have consumed but how many hours it did consume. There is no evidence in the record contradicting the Company's that the task took approximately four or five hours.

was in a position to verify its diagnosis of trouble and its prognosis of repair or replacement. At any rate, it seems not to have changed the 12 hour estimate for rehabilitation made at an earlier hour, nor did it evidence any change in its intention to permit the employees on the 8-4 shift to report according to schedule. Then, as stated in the Third Step Answer

> "At about 7:30 a.m. on the 21st, it was found that repairs could not be completed until around 4:00 or 5:00 p.m. of that day. The Company had no alternative but to send the crew home before they started to work."

The employees thus sent home claimed four hours of reporting pay under the cited section.

The decision in this case turns on the meaning of Article VI, Section 5. The Company concedes that it has application to situations where, through some fault of scheduling, an employee was permitted to report for work when no work was available for him. In such a case it recognizes that if it fails to notify him not less than two hours before starting time, as provided, it is liable for reporting pay. It goes on to argue, however, that when the failure to supply work is due to a "power or equipment failure" or other contingency set forth in Paragraph 124, no liability for reporting pay attaches and that the requirement of notification in such an event is excused. It remarks that in practice it seeks to minimize the personal inconvenience to employees in such cases by giving them such notice as it can, but this is not to be regarded as a requirement of the Agreement.

The Union, on the other hand, claims that as this is a case of faulty scheduling by the Company it matters not what the contingency may have been which prevented the employees from going to work. It points out that if the Company's theory and interpretation were to be accepted, and a breakdown of equipment, for example, should occur at 11:20 p.m. which the Company definitely knew could not be repaired until after midnight on the next day, the 8-4, the 4-12 and the 12-8 turn crews, each of which had been "scheduled" to report at the start of their turns, need not be alerted or notified as to when work would again be available to them. On this hypothesis, according to the Union, should they report, as scheduled, and not permitted to work, they would hot be entitled to reporting pay. This result the Union regards as plainly contrary to the purpose of the provision.

Attention focuses on Paragraph 124. This starts by declaring the purpose of the Section to be to "compensate employees for faulty scheduling ...". It then proceeds to state

> " ... and it shall not apply if the failure to supply work to an employee is due to ... power or equipment failure ... ".

The Company vigorously asserts that "it shall not apply" refers to the Section as a whole, i.e., reporting pay need not be paid to one who was scheduled to report and upon arrival at the plant finds no work available in his occupation due to power or equipment failure even though the Company knew this in ample time to notify him of the situation.

The Company's position would be unassailable if the contingency of the power or equipment failure occurred without sufficient time to notify the employees not to report, or if the facts were such that it was uncertain whether the repairs could be made in time to use the employees' services on the turn for which they were scheduled. But if Management knows two or more hours before reporting time that there will be no work for the employees, its failure to notify them as required by Section 5 would constitute faulty scheduling within the meaning and intent of this provision of the Agreement. It is explicitly declared that

> " The purpose of this Section is to compensate employees for faulty scheduling."

Each employee has the duty "to keep the Company advised of a reliable means of prompt communication with him." In light of the stated purpose of the provision, it is unreasonable to believe that when the Company knows well in advance that there will be no work on the scheduled turn it may nevertheless disregard its duty to notify the employees simply because the reason for the lack of work is power or equipment failure. If there is uncertainty as to whether there will be work then the Company's position would be sound. But where there is no uncertainty, we have not only a power or equipment failure but also a situation of faulty scheduling, to prevent which Section 5 was designed.

This view is not necessarily inconsistent with that of Arbitrator Platt in Arbitration No. 43. He did not consider the possibility of faulty scheduling and one of the contingencies named in Paragraph 124 as being in congruence. The facts of that case probably did not make it necessary for him to consider such a possibility. The same is true of Arbitration No. 94. Arbitrator Curran had no occasion apparently to consider the application of this provision if the Company were aware well in advance that operations could not be carried on during the scheduled turn.

In indicating what the ruling would be if the Company were guilty of faulty scheduling because it knew over two hours before the beginning of the turn that no work would be available on the turn and did not notify the employees not to report, we have by no means disposed of the specific issue in this grievance.

What is the factual situation in this case? The Union has alleged faulty scheduling, but the facts in the record fall short of proving that the Company was at fault in not giving timely notification to the 8-4 crew. Fault cannot lightly be assumed from such circumstances as occurred here. They must be proved.

The Company asserts, and there was no credible contradiction, that on first diagnosis of the breakdown it was believed that repairs would be made, if not in time for the commencement of the 8-4 turn then, at least, early enough to have the men on the 8-4 turn "start the mill." Apparently it still harbored this expectation when the shield had been removed at a later hour. It was not until the Assistant Supervisor of the Plant #2 Mills appeared at about 7:30 a.m. on March 21 that it was determined that the progress of the repairs was such that they would not be completed before 4:00 or 5:00 p.m.

on that day, or after the end of the 8-4 turn. It was at this time, only one half hour before the 8-4 turn started, that it was decided to send the crew home before starting work. I cannot find that these circumstances standing alone as they do, add up to a conclusion that the Company was guilty of faulty scheduling.

AWARD

The grievance is denied.

Dated: January 10, 1961

/s/ David L. Cole
David L. Cole
Permanent Arbitrator